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3. Defendant, Valve Corporation (“Valve”), distributed infringing copies of Mr. Prince’s music. Valve ignored a takedown notice, thus waiving any immunity under the Digital Millennium Copyright Act (“DMCA”), and continued distributing infringing copies of the music despite knowing that Mr. Prince owned the copyrights in the music.

Parties

4. Mr. Prince is a composer and sound designer who is domiciled in Sevier County, Tennessee. He is the author of the music covered by copyright registration number SR221-908 and solely owns the rights to such music.

5. Gearbox Software is a Texas limited liability company with its principal place of business in Texas that develops video games.

6. Gearbox Publishing is a Texas limited liability company with its principal place of business in Texas and a subsidiary of Gearbox Software that develops, publishes, and/or distributes video games.

7. Mr. Pitchford, who is domiciled in Texas, is the president and CEO of Gearbox and one of its founders. Given his position, Mr. Pitchford had the right and ability to supervise the infringing activities of Gearbox Software and Gearbox Publishing and, based upon his personal interactions with Mr. Prince and the individuals responsible for developing and distributing *Duke Nukem 3D World Tour*, Mr. Pitchford actually exercised such rights. He and his companies profited from their infringement. Further, Mr. Pitchford had knowledge of his companies’ infringement of Mr. Prince’s music and, through his role as president and CEO, materially contributed to that infringement.

8. Valve is a Washington corporation with its principal place of business in Washington. Valve distributed digital copies of *Duke Nukem 3D World Tour* via its distribution platform called “Steam.”

Jurisdiction and Venue

9. Mr. Prince asserts claims under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and federal-question jurisdiction exists pursuant to 28 U.S.C. § 1331. Additionally, diversity jurisdiction exists pursuant to 17 U.S.C. § 1332 because the parties are diverse and the amount in controversy exceeds more than \$75,000, exclusive of interest and costs.

10. Personal jurisdiction exists because Defendants knowingly and purposefully directed their tortious conduct at and caused harm to a citizen of East Tennessee. Pitchford, Gearbox Software, and Gearbox Publishing have purposefully distributed infringing copies of *Duke Nukem 3D World Tour* in East Tennessee, including through internet and brick-and-mortar retailers. Before doing so, they knew that the game included Mr. Prince’s music, knew that they had not paid Mr. Prince for such music, knew that Mr. Prince lived in East Tennessee, and knew that he would be harmed in East Tennessee if they used his music without payment.

11. Valve purposefully distributed copies of *Duke Nukem 3D World Tour* in East Tennessee, including through its online games outlet and its distribution platform called “Steam.” Through its “Steam” distribution platform where East Tennessee customers download a copy of *Duke Nukem 3D World Tour*, Valve specifically intended to interact with and solicit the business of East Tennessee residents. Valve continued

distributing copies of *Duke Nuke 3D World Tour* after being notified that the game included the unauthorized use of Mr. Prince's music and after being notified that Mr. Prince lived in East Tennessee.

12. Additionally, Defendants purposefully advertised and promoted *Duke Nukem 3D World Tour* in East Tennessee, including via their interactive websites, which they expected would be viewed by individuals in East Tennessee, and via traditional advertising in brick-and-mortar stores or publications. Defendants have profited from the infringing goods they sold and distributed in East Tennessee. Defendants have also purposefully distributed and promoted multiple other games in East Tennessee.

13. Venue exists under 28 U.S.C. § 1391(a)(b)(2) and 28 U.S.C. § 1400(a).

Factual Background

I. Mr. Prince created music and sound effects for *Duke Nukem 3D*.

14. Apogee Software, Ltd. ("Apogee") developed and published the original *Duke Nukem* in 1991. For the last 29 years, multiple games based upon *Duke Nukem* have been sold and released. A version called *Duke Nukem 3D* was released to critical acclaim in 1996 and was praised for its unique risqué humor and the manner in which it satirizes Hollywood action movies. It was the most popular version of the game and is considered by many in the industry to be responsible for popularizing first-person shooters.

15. Mr. Prince created music, sound effects, and dialog recordings for *Duke Nukem 3D*. Pursuant to a Software Publishing Agreement with Apogee, Apogee had a

limited right to use Mr. Prince's music in *Duke Nukem 3D* in exchange for a royalty equal to \$1 per unit sold.

16. Mr. Prince registered the copyrights for his music in 1996 and received Certificate of Registration SR221-908. All sixteen songs Mr. Prince registered were included in *Duke Nukem 3D*.

17. In 1996, Apogee released *Duke Nukem 3D*, which included 16 copyrighted songs, sound effects, and edited dialog created by Mr. Prince.

18. Apogee never owned the music Mr. Prince composed and that was included in *Duke Nukem 3D*.

II. Gearbox used Mr. Prince's music without compensation.

19. Upon information and belief, in approximately 2010, Gearbox Software acquired certain rights to the *Duke Nukem* games from Apogee. Neither Apogee nor Gearbox advised Mr. Prince about the transaction, nor inquired about his intellectual property.

20. In October 2016, Mr. Prince learned that Gearbox was about to release a game called *Duke Nukem 3D World Tour*.

21. Incredibly, the electronic files for the music within *Duke Nukem 3D World Tour* include text specifically stating that Mr. Prince owns the copyright to the music and has reserved all rights to the music's use. Yet Gearbox incorporated the music into the game without ever contacting Mr. Prince and without clearing the rights expressly mentioned in the electronic files.

22. On October 6, 2016, before Gearbox released the game, Mr. Prince provided his address to Mr. Pitchford and informed him that Gearbox would need to send him royalties if it wanted to use Mr. Prince's music.

23. Mr. Pitchford said Mr. Prince would be "taken care of." Mr. Pitchford's promise was false when made.

24. Before Mr. Prince contacted Mr. Pitchford, no one from Gearbox had attempted to contact Mr. Prince regarding the use of his music, sound effects, or edited dialog.

25. Mr. Pitchford began stringing Mr. Prince along with promises that he would "do right" by Mr. Prince and that Mr. Prince would be "taken care of." The promises were false when made.

26. Before Gearbox Software and Gearbox Publishing released *Duke Nukem 3D World Tour*, Mr. Pitchford received a copy of the 1996 license between Apogee and Mr. Prince. He thus knew that Mr. Prince owned the rights to the music and that Apogee had to pay Mr. Prince for its use of the music in prior versions of *Duke Nukem* games.

27. Gearbox Software and Gearbox Publishing released *Duke Nukem 3D World Tour* on October 11, 2016. The game included music composed by Mr. Prince that is covered by his copyright registration and sound effects and edited dialog created by Mr. Prince. The electronic files for the music within *Duke Nukem 3D World Tour* include text specifically stating that Mr. Prince owns the copyright to the music.

28. Eventually, Mr. Pitchford directed Steve Gibson, the Head of Publishing at Gearbox Publishing, to make sure that Gearbox was "doing right" by Mr. Prince.

29. Despite receiving a direct order to “do right” by Mr. Prince, Gearbox proceeded to distribute infringing copies of *Duke Nukem 3D World Tour* without obtaining a license and without compensating Mr. Prince.

30. During discussions with Mr. Prince, Mr. Pitchford and Mr. Gibson acknowledged that Mr. Prince owned the music he had composed for *Duke Nukem 3D* and that Gearbox used in *Duke Nukem 3D World Tour*.

31. Mr. Pitchford adopted the position that Gearbox had no license to use Mr. Prince’s music.

32. Mr. Gibson acknowledged that Gearbox had no license to use Mr. Prince’s music.

33. Upon information and belief, Gearbox did nothing to clear the rights to Mr. Prince’s music before incorporating it into *Duke Nukem 3D World Tour*.

34. Eventually, it became evident that Gearbox had no intention of paying Mr. Prince for its use of his music. Mr. Prince advised Gearbox that it could either pay him according to the terms of the original license for the music or remove his music from the game. Mr. Pitchford and Gearbox did neither.

III. Valve knowingly distributed infringing copies.

35. Valve distributed copies of *Duke Nukem 3D World Tour*.

36. In January 2018, Mr. Prince sent a Notice of Exclusive Right Infringement to Valve, notifying Valve of his copyright, his address in Tennessee, and Gearbox’s infringement.

37. The United States Postal Service delivered the Notice of Exclusive Right Infringement to Valve on February 8, 2018.

38. Valve did not respond to the Notice.

39. Valve continued distributing copies of *Duke Nukem 3D World Tour* after February 8, 2018.

40. The copies of *Duke Nukem 3D World Tour* that Valve distributed after February 8, 2018, contained Mr. Prince's copyrighted music.

Causes of Action

I. Copyright Infringement (Gearbox Software and Gearbox Publishing).

41. Bobby Prince is the owner of copyrighted music.

42. Gearbox Software and Gearbox Publishing copied and used Mr. Prince's copyrighted music without permission and created and distributed infringing copies of *Duke Nukem 3D World Tour*.

43. Before Gearbox Software and Gearbox Publishing distributed infringing copies of Mr. Prince's music, they knew, or at least should have known, Mr. Prince owned the rights to the music. They specifically knew, among other things, that Mr. Prince owned the rights to the music, knew they had no license for the music, and knew that their predecessor, Apogee, had been required to pay Mr. Prince royalties to use the music.

44. Gearbox Software and Gearbox Publishing proceeded without a license and their infringing conduct is willful. Defendants acted willfully and with reckless disregard for Mr. Prince's rights when they incorporated his music into *Duke Nukem 3D World*

Tour, when they created and distributed infringing copies, and when they failed to remove his music from the games.

45. In the alternative, if Defendants are claiming they have a license to use the music at issue (they do not), they have failed to pay Mr. Prince anything under the terms of the license. Their total failure to pay Mr. Prince renders the license void or, alternatively, Gearbox is liable for unpaid royalties.

II. Vicarious and Contributory Copyright Infringement (Mr. Pitchford).

46. Mr. Pitchford had the right and ability to control whether Gearbox Software and Gearbox Publishing used Mr. Prince's music, whether they compensated him, and whether they distributed infringing copies of *Duke Nukem 3D World Tour*. He benefited from the sales of the infringing goods.

47. Also, Mr. Pitchford knew of his companies' copyright infringement, materially contributed to and induced the unlawful use of Mr. Prince's copyrighted music, and derived a benefit from the infringement.

48. Mr. Pitchford's conduct was willful, knowing, or at least reckless.

III. Copyright Infringement (Valve).

49. Valve distributed copies of *Duke Nukem 3D World Tour*.

50. Valve continued doing so after receiving actual notice that *Duke Nukem 3D World Tour* infringed Mr. Prince's copyright.

51. Valve is liable for willful copyright infringement.

WHEREFORE, Mr. Prince demands a trial by jury and requests a judgment in his favor and an award of maximum statutory damages per infringement or, alternatively,

actual damages and Defendants' profits, plus attorneys' fees and costs, as well as an injunction prohibiting Defendants from infringing his copyrights.

Respectfully submitted,

/s/ Tim Harvey
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